

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

15 Cr. 867 (RMB)

5 REZA ZARRAB,

6 Defendant.

7 -----x

8 New York, N.Y.  
9 November 30, 2016  
10:15 a.m.

10 Before:

11 HON. RICHARD M. BERMAN,

12 District Judge

13 APPEARANCES

14 PREET BHARARA

United States Attorney for the  
15 Southern District of New York

16 MICHAEL LOCKARD

DAVID W. DENTON, JR.

DEAN SOVOLOS

17 Assistant United States Attorney

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Attorneys for Defendant

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## APPEARANCES CONTINUED

KIRKLAND & ELLIS

Attorneys for Defendant

EDMUND G. LACOUR

VIET D. DINH

HARRY RIMM

CJA counsel for the Defendant

Also Present: Agent Jennifer McReynolds, FBI

Agent Scott Geissler, FBI

Asiye Kay, Turkish Interpreter

George Esayan, Turkish Interpreter

1 (Case called)

2 THE COURT: We have a fair amount of ground to cover  
3 today. First, I should mention that we have a Turkish language  
4 interpreter, as we have had throughout these proceedings. And  
5 just to confirm with Mr. Zarrab that he is able to understand  
6 these proceedings with the represent of the interpreter?

7 THE DEFENDANT: Yes.

8 THE COURT: As I was saying. So there are a few  
9 things that I want to cover today. Of course, the principal  
10 one is a so-called Curcio hearing to discuss any actual or  
11 potential conflicts of interest. Particularly, we are focused  
12 on any that may result from the fact that the law firm of  
13 Kirkland & Ellis represents both Mr. Zarrab in this case, on  
14 the one hand, and two banks which have participated in some of  
15 the transactions referred to and described in the indictment in  
16 this case, namely Bank of America and Deutsche Bank, on the  
17 other hand. That is one principal focus of the proceeding, and  
18 I'm going to have some preliminary questions for you all with  
19 respect to that.

20 I'm going to incidentally hear from the government  
21 briefly, and then from the defense briefly, also from Mr. Rimm  
22 briefly on those subjects.

23 It's also been raised -- this is particularly, I  
24 guess, for you Mr. Brafman. As you were aware by the  
25 government when it raised this issue of the Curcio hearing, the

1 question of compartmentalization arose. And we haven't really  
2 discussed that at any length, but are you and Mr. Zarrab  
3 prepared to talk about that, as well? It was raised at the  
4 same time, and I don't think we've given you an opportunity to  
5 comment on that

6 MR. BRAFMAN: Your Honor, I'd be prepared to comment  
7 on that at the Court's convenience, and I think it will not be  
8 an issue once I've made my position clear. Mr. Zarrab and I  
9 have had an opportunity to discuss it as well, and I think you  
10 could briefly question him through the interpreter, and I think  
11 he understands the issue.

12 THE COURT: Those would be the questions that were  
13 originally suggested by the government?

14 MR. BRAFMAN: In substance, your Honor, yes.

15 THE COURT: In substance. Fine. So we'll probably  
16 cover that, also.

17 MR. BRAFMAN: I think if you would permit me at the  
18 time before you actually get to the questions maybe a very  
19 brief statement, I think it will shorten the process.

20 THE COURT: Okay. There's going to be a whole other  
21 section relating to the timetable in this case. In that  
22 regard, it's my understanding that counsel does not want to  
23 have a suppression hearing on Monday and has asked for a later  
24 date. We're going to have to talk about some dates. I'm happy  
25 to do that, but we're going to have to talk about some date or

1 dates appropriate for that purpose.

2 MR. BRAFMAN: Excuse me, Judge. At that time, we also  
3 want to address the issue of the two open issues; that is, the  
4 Franks hearing that the government objects to, which I thought  
5 the Court had already ordered, and also the testimony that we  
6 have requested of Agent Geissler.

7 THE COURT: I'll be prepared to do that. I know you  
8 mentioned in your most recent letter that I had ordered the  
9 Franks hearing. My understanding was, as a result of my order  
10 of November 11, that that's still an open legal issue. I said  
11 something in there subject to determining whether there should  
12 be that hearing or should not be one, so that is something that  
13 I'm still looking at the briefs or the submissions on.  
14 Actually, what I said on November 11, on endorsing your letter,  
15 it said, "Subject to ruling that a hearing is unnecessary." So  
16 that's somewhat of an open question still in my mind. But what  
17 I'm going to do today, there are some supplemental briefing  
18 that I would like on that subject.

19 MR. BRAFMAN: I understand, Judge, and I would just  
20 like to be briefly heard at the end.

21 There's also going to be an issue with respect to  
22 scheduling with respect to the trial, whether you want to hear  
23 that today, as well.

24 THE COURT: I do. I'm prepared to deal with that, as  
25 well.

1 MR. BRAFMAN: Thank you, Judge.

2 THE COURT: Back to the question of whether there's  
3 actual potential conflict the interest.

4 Preliminarily, I wanted to ask the former Bancroft  
5 attorneys, of whom there are four, when they became either  
6 partners at or affiliates, however the legal relationship  
7 between them and Kirkland & Ellis actually took place.

8 MR. DINH: Thank you, your Honor. Viet Dinh from  
9 Kirkland & Ellis. I was formerly a partner at Bancroft PLLC,  
10 and as of October 22nd, I became a parter at Kirkland & Ellis.  
11 Likewise, all my colleagues who have entered an appearance  
12 here, Paul Clement, Jeff Harris, Eddie Lacour, all became  
13 Kirkland & Ellis lawyers as of October 22nd.

14 THE COURT: So that's the operative date. I know you  
15 objected to the government saying it was a merger, but however  
16 that that took place, you became partners, the four of you, of  
17 Kirkland & Ellis on October 22, 2016.

18 MR. DINH: October 22nd. As a technical matter, it  
19 was not a merger. Bancroft is still an operating LLC and was  
20 winding down. All of us, including all of our administrative  
21 staff, just simply left Bancroft in order to join Kirkland &  
22 Ellis as new employees.

23 THE COURT: Okay. Briefly, as I understand the  
24 issue -- and I'll hear from the government in a moment and then  
25 from the defense -- the government is contending, and did so

1 first in a letter to me dated November 18, 2016 requesting this  
2 hearing, because they said that the new relationship between  
3 Mr. Dinh and other defense counsel, three other defense counsel  
4 with Kirkland & Ellis either posed an actual or potential  
5 conflict of interest because Kirkland & Ellis, prior to that  
6 time and currently represents Bank of America and Deutsche  
7 Bank, which are two of the banks that have been implicated in  
8 transactions alleged by the government to be unlawful  
9 transactions involving Mr. Zarrab.

10 In its letter dated November 29, 2016, the government  
11 provides some detail about those transactions. We'll hear from  
12 them in a moment. I was not aware, but the cumulative value of  
13 those transactions is in the billions of dollars; is that  
14 right?

15 MR. LOCKARD: That's correct, your Honor.

16 THE COURT: For example, there's one with Deutsche  
17 Bank via the Al Nafees Exchange, approximately 6,548 transfers  
18 referred to total 1 billion -- is that \$13,898? No, that's not  
19 right. It's a billion 13. \$1.13 billion. Those transactions,  
20 approximately, right?

21 MR. LOCKARD: That's correct, your Honor.

22 THE COURT: So you'll mention that, no doubt, in your  
23 discussion.

24 MR. LOCKARD: Correct.

25 THE COURT: I'm going want to hear from you as to

1 whether you think there is an actual conflict or is it a  
2 potential conflict as a result now of the back and forth of  
3 submissions by both the government and the defense.

4 MR. LOCKARD: Yes, your Honor. I'll clarify something  
5 that I think we were careful in how we described the  
6 transactions in our letters, and I do want to clarify. It is  
7 not the government's contention that each one of those  
8 transfers is an elicited transfer, but it is our contention that  
9 each of those entities were involved in elicited transfers and  
10 that --

11 THE COURT: Hold on a second. Because of the  
12 translation, I think it would be best if counsel speak from the  
13 podium.

14 MR. LOCKARD: Yes, your Honor. I'll start with, just  
15 to clarify, it is not the government's contention that each of  
16 the transfers identified in our November 29th letter is an  
17 elicited transfer, but it is our contention, and we expect that  
18 the proof at trial would show, that each of the identified  
19 entities were involved in elicited transactions in the overall  
20 scheme charged in the indictment, and that the transfers and  
21 dollar figures represent the amount of activity by that entity  
22 that passed through each of the two banks.

23 I think the government views the issue as one of an  
24 actual conflict, not in the sense that the firm's  
25 representation of Mr. Zarrah necessarily is directly adverse to



1 any other matter in which the firm represents the banks,  
2 because we don't know the details of those representations, but  
3 certainly positions that Mr. Zarrab has taken even so far in  
4 this case have been positions that the government views as  
5 being adverse to the interests of the banks, and in particular,  
6 arguments that Mr. Zarrab has made in support of his motion to  
7 dismiss, which we think are likely to be echoed as trial  
8 defenses to the effect that --

9 THE COURT: Before you get to that. You're saying  
10 that you think that the relationship poses actual conflicts  
11 based on this matter alone, that is to say this criminal  
12 proceeding against Mr. Zarrab, in which the two banks, Bank of  
13 America and Deutsche Bank, are implicated.

14 MR. LOCKARD: Correct. That's because Mr. Zarrab has  
15 taken the position in this matter that the banks were not  
16 victims of the charged bank fraud defense.

17 The government believes that they were, and so  
18 Mr. Zarrab's position that they are not victims of the charged  
19 bank fraud offense is a position that we think is adverse to  
20 the interests of the bank as a victim. We would expect at  
21 trial, because it is a bank fraud charge, a very common  
22 defense, or attempted defense, in a bank fraud charge is that  
23 either of the banks were aware of the activity and, therefore,  
24 were not misled or did not care and, therefore, the information  
25 was not material.

1 Obviously, Mr. Zarrab doesn't have to tell us what his  
2 defenses are, but those are extremely common defenses in a  
3 fraud charge and something that we would expect to see in some  
4 variation at trial, again, which is a position that we think is  
5 adverse to the banks in this case. We think it is an issue of  
6 an actual conflict for those reasons.

7 THE COURT: Let me ask you this. Of course, you don't  
8 know what the evidence at trial would show, but suppose it came  
9 about that the banks, rather than Mr. Zarrab, were actually  
10 encouraging these transactions, and one could envision  
11 theoretically a defense by Mr. Zarrab said, 'Well, I'm just a  
12 businessman. You know. I engage in commercial transactions  
13 all the time. And endeavoring to solicit my business, Bank of  
14 America and Deutsche Bank said, oh, do your commercial  
15 transactions through our banks.' There's nothing wrong with  
16 that, and in fact, encouraged him to do it. What if that  
17 defense were raised?

18 MR. LOCKARD: I think that's perhaps an even stronger  
19 variation on the potential argument that the banks didn't care  
20 would be the argument that the banks were actively encouraging  
21 the conduct? I don't think so far in this litigation  
22 Mr. Zarrab has really contested that he was engaged in business  
23 with either the government of Iran or Iranian entities. The  
24 defense that has been advanced has been either that that's  
25 perfectly lawful for him to do because he's outside the United

1 States or that no one was deceived or defrauded in a legal  
2 sense as a result of his conduct. And so if the defense is  
3 that the banks were aware of the nature of the activity and  
4 either did not care or actively were encouraging it in order to  
5 generate business and fees, he would be implicating the banks  
6 in criminal conduct.

7 THE COURT: And exculpating himself to some extent, or  
8 endeavoring to.

9 MR. LOCKARD: Potentially. I think we would view that  
10 as not particularly exculpatory but as a way to shift  
11 responsibility elsewhere, certainly.

12 THE COURT: Fair enough. Thank you.

13 Mr. Brafman, did you want to address this issue?

14 MR. BRAFMAN: Your Honor, I think this is an issue  
15 that representatives of Kirkland & Ellis should address.

16 THE COURT: Okay.

17 MR. DINH: Thank you, Mr. Brafman. Your Honor, may it  
18 please the Court. We appreciate the government's position that  
19 we are not directly adverse to the banks in this case, but only  
20 with respect to the potential theories of liability as well as  
21 defenses. Therefore, our position --

22 THE COURT: Excuse me. I'm not sure that is his  
23 position. I thought he said that he's of the view that there  
24 is adverse -- a relationship between Mr. Zarrah and the banks,  
25 not --

1 MR. DINH: I think, again, your Honor --

2 THE COURT: Maybe I'm wrong.

3 MR. DINH: -- I'll leave whatever -- I think what I  
4 mean to say is, I hear the government saying that we are not  
5 directly adverse in the sense that we're representing the banks  
6 in this proceeding as well as concurrently representing  
7 Mr. Zarrab in this proceeding. I think that's certainly not  
8 clear, and it is relevant to our position on the ethical  
9 conflicts. I think here the government is saying that there is  
10 a potentially springing in direct conflict as to their status  
11 as victims, because should the Court agree with the government  
12 and should the government prove that there was actual harm,  
13 then the banks would have some sort of claim that arises out of  
14 the activities as alleged and to be proved at trial, some cost  
15 with respect to the enhanced investigation, and some risk of  
16 governmental action of the like. I would consider that to be  
17 analogous to the well-commented and more common case that is  
18 well-discussed in the literature with respect to the common  
19 concurrent representation of an insured party that is also  
20 represented by the insurance company. I had it a little bit  
21 different. A lawyer may represent a plaintiff to sue a party  
22 that is insured and also represents the insurance company. I  
23 think the commentary in the case law is clear that that does  
24 not pose a conflict, even though in some ways the insurance  
25 company's economic interest if liability is sought would be

1 directly adverse to the plaintiff, the client. I think this is  
2 analogous to that situation, which is, it is an indirect  
3 springing potential conflict that arises out of that indirect  
4 relationship. So that's why our position is that there is no  
5 conflict -- actual conflict with respect to Rule 1.7 under the  
6 New York Rules of Professional Responsibility.

7 But in all event, I think that the critical issue for  
8 the Court today is obviously that which we have conceded to,  
9 which is the Curcio issues and the defendant's right, Sixth  
10 Amendment right to counsel of his choice, as well as to  
11 conflict-free trial. I think all of those issues can be  
12 addressed by the Court's procedures that the Court has ordered,  
13 including appointment of Mr. Rimm, including our commonly  
14 submitted script for the Court to assure itself that Mr. Zarab  
15 has made a knowing and intelligent waiver of any potential  
16 springing actual of the conflicts that is waivable.

17 As you know, out of abundance of caution, and as  
18 suggested by the Court, we have obtained the banks' statements  
19 as to their position in this regard. We went a step further  
20 while we were making the frantic appeals to the banks then and  
21 obtained their waiver after fully disclosing the facts of this  
22 case to our representation of those banks.

23 THE COURT: Could you tell us, summarize what those  
24 waivers -- so Bank of America has submitted a waiver and  
25 Deutsche Bank has submitted a waiver. What are those

1   waivers -- could you tell us who wrote them, or rather who  
2   signed them and what they purport to waive?

3           MR. DINH: Yes. Your Honor, I think that all of the  
4   waivers were executed by associate general counsels, which are  
5   the equivalent of senior vice president within the bank. I  
6   believe one was executed by the Head of Regulatory Affairs of  
7   the Americas for the banks, a clearly authorized person, and  
8   after fully disclosing the information here, they waived any  
9   conflicts that may present itself and allows Kirkland & Ellis  
10   to represent Mr. Zarrab at the same time that we represent  
11   those banks.

12           Likewise, with Deutsche Bank, we had a waiver --  
13   actually, that was the waiver from the Head of Regulatory  
14   Affairs for the Americas, and that was signed by the associate  
15   general counsel for regulatory affairs for the Americas.

16           The Bank of America was executed by an associate  
17   general counsel and senior vice president that is in charge of  
18   supervising all outside legal counsel and, therefore, clearly  
19   had an authority to waive such conflicts, or potential  
20   conflicts, on behalf of the bank, and likewise, consents to  
21   the -- for representing both Mr. Zarrab and the bank in various  
22   matters.

23           THE COURT: So one of those two waivers, I think it  
24   was the Deutsche Bank waiver, that's on behalf of the New York  
25   branch, do I understand that correctly, of Deutsche Bank, but

1 not beyond the New York branch? Could you explain that?

2 MR. DINH: Yes, your Honor. There is a bit of  
3 indeterminacy, if you will, because banks are locally chartered  
4 within each state, nation, and the like. So you can imagine  
5 that each bank entity is separately chartered and incorporated  
6 with an overall parent; in this case, in Germany. So when the  
7 government identified one portion of the Deutsche Bank, I think  
8 it was the Deutsche Bank Deposit & Trust Company that the firm  
9 represented in some proceedings in SDNY. We went to the bank  
10 and told them the facts and the like, and the bank and its  
11 counsel determined that this is most likely the affected entity  
12 through which any alleged transfers would be made because it is  
13 the money center bank through which wire transfers through  
14 corresponding accounts would be transferred. So that's why it  
15 was the New York branch, because it is the money center of the  
16 location, and that is the affiliate or subsidiary or corporate  
17 entity that most closely matches the allegations. That is our  
18 and the bank's good faith effort in order to identify the right  
19 entity with which to waive so as to give the Court comfort.

20 Again, as I said, given our position that there is no  
21 actual conflict under Rule 1.7, such waiver is not necessary,  
22 but it is done out of an abundance of caution and in order to  
23 give the Court more comfort.

24 THE COURT: You also mentioned in correspondence that,  
25 I guess also in an abundance of caution, Kirkland & Ellis has

1 agreed to establish this ethical wall, I think it's called,  
2 somehow separating off representation of Mr. Zarrab and  
3 representation of Bank of America and Deutsche Bank. Could you  
4 tell us what that ethical wall means and what it is?

5 MR. DINH: Yes, your Honor. Out of abundance of  
6 caution, what we've done is we have put in a wall that  
7 encapsulates all the personnel who have worked on Mr. Zarrab's  
8 representation. So that includes the four lawyers, as well as  
9 all of our support staff in this representation. And  
10 basically, no information about Mr. Zarrab's case can be  
11 accessed except for those individuals. If somebody else wants  
12 to enter the representation within the firm, so the rest of  
13 the members of the firm would have to get specific permission  
14 from general counsel in order to access that information. I  
15 think that's the tightest wall we can give in order to protect  
16 all the confidentiality of this particular case.

17 If I may, there are some further refinements that, out  
18 of candor, I would like to apprise the Court.

19 The government, in addition to Deutsche Bank and Bank  
20 of America, which is the primary institutions that have been  
21 identified in their motion, has previously given us a list in  
22 total of 11 banks that may be affected by this matter. In  
23 addition to actions that we have taken and submitted with the  
24 Court with respect to Deutsche Bank and Bank of America, we  
25 have determined that six other banks also represented by



1 Kirkland & Ellis. We have sought from them -- we have apprised  
2 them of the government's position and given the full  
3 information and disclosure, as we've given Deutsche Bank and  
4 Bank of America, and sought from those banks the same type of  
5 waivers that we have obtained from Deutsche Bank and Bank of  
6 America.

7 We have not heard back from all of those institutions  
8 because our efforts have been focused on the Court's orders  
9 with respect to Deutsche Bank and Bank of America, but I wanted  
10 to let you know that we have taken the preemptive steps, even  
11 though it's not been briefed, in order to take care of those  
12 issues.

13 One further refinement, if you will. One of the banks  
14 that is in the list of six that the firm also represents is  
15 HSBC. With respect to HSBC, the ethical wall does not exclude  
16 two lawyers who works on one HSBC matter; that is, Mr. Clement  
17 and myself.

18 THE COURT: All right.

19 MR. DINH: So Mr. Clement and myself are handling an  
20 appeal for HSBC -- ironically, on the same side as the  
21 government -- to the Second Circuit where all of us are trying  
22 to appeal from an order from Former Judge Gleason.

23 With respect to that, I have also conversed with  
24 Mr. Zarrah and explained to him that Mr. Clement and I  
25 represent HSBC in that matter so we can't metaphysically wall

1 off ourselves, and Mr. Zarrab understands that metaphysical  
2 issue. I've likewise explained that to the responsible counsel  
3 for HSBC, and they understand it, and they have indicated their  
4 consent and waiver, although they have not executed the  
5 language that we've sent to them. But both sides understood  
6 that one particular wrinkle with respect to HSBC.

7 THE COURT: So that means there's no ethical wall when  
8 it comes to HSBC.

9 MR. DINH: With respect to Mr. Clement and myself,  
10 yes.

11 THE COURT: Well, I mean, the wall as described  
12 doesn't exist with respect to HSBC.

13 MR. DINH: Right. Or I would say nobody else except  
14 for Mr. Clement and myself can access both Mr. Zarrab and --

15 THE COURT: So you and he have gone over the wall, so  
16 to speak.

17 MR. DINH: Exactly.

18 THE COURT: I was not aware of these other six banks,  
19 and it seems to me that we will need a waiver comparable to the  
20 ones that we received from Bank of America and Deutsche Bank.  
21 Do you anticipate any problem getting those or --

22 MR. DINH: I don't.

23 THE COURT: You don't have to really answer that.

24 MR. DINH: Exactly. I got the writing from the last  
25 two banks, so I can't make any representations with respect to

1 the future ones, although we have had indications from two of  
2 the banks that they would execute. So --

3 THE COURT: So those are in the works, as it were.

4 MR. DINH: Yes, your Honor.

5 THE COURT: Yes.

6 MR. LOCKARD: One thing that we would like to note for  
7 the record. As this Curcio inquiry has proceeded, the  
8 government obviously also has been in touch with the various  
9 banks in connection with obtaining records in furtherance of  
10 the investigation and in preparation for trial, as well as  
11 identifying potential trial witnesses and trial testimony.

12 In those discussions, we did learn that the parts of  
13 the bank at Deutsche Bank and Bank of America with whom the  
14 government has been dealing on this case were not aware of the  
15 Curcio inquiries with the general counsel's office. Typically,  
16 the part of the bank that responds to government inquiries is  
17 not necessarily part of the general counsel's office, so we  
18 have encouraged them to --

19 THE COURT: That, I would say is --

20 MR. LOCKARD: -- to speak internally.

21 THE COURT: -- unfortunately overall, let alone with  
22 respect to this case.

23 MR. LOCKARD: I think it likely would be the case --

24 THE COURT: Just an observation.

25 MR. LOCKARD: -- at the other banks represented by

1 Mr. Dinh's firm, as well. So we have earned the banks  
2 to talk to each other internally to make sure that everybody is  
3 on the same page and there is full information throughout this  
4 process. If Mr. Dinh could provide us with a list of the other  
5 banks, we can also make sure that the banks are internally  
6 speaking with each other.

7 THE COURT: Yes. So we need to formalize that a  
8 little bit more. I mean, that the general counsel is not  
9 talking to some other part of the bank gives me less comfort  
10 than I had when I came out on the bench today with respect to  
11 the two waivers that I've seen, so that has to be addressed. I  
12 mean, it's illusory, unless the person who wrote the waiver  
13 really speaks for the bank, and what we don't want to hear is  
14 that the general counsel or somebody else was unaware of that.  
15 That is a problem, frankly, for me, and so that has to be  
16 addressed in a formal way.

17 From what I'm hearing, the six banks are in no  
18 different position vis-a-vis this Curcio proceeding than Bank of  
19 America or Deutsche Bank. Do you perceive any difference? I  
20 mean, so to have two waivers and not six doesn't really come to  
21 grips with the problem.

22 MR. LOCKARD: I think it largely is the same. I think  
23 one potential material difference, and we are just hearing  
24 about it so I don't have fully formed thoughts about it yet,  
25 but it sounds like the HSBC matter may be slightly different

1 because Mr. Dinh and Mr. Clement are personally involved in  
2 that representation. I understand, though I'm not very  
3 familiar with the matter, I understand that it is a sanctions  
4 related matter, a sanctions compliance matter, so I think  
5 that's something that may require a little bit of additional  
6 consideration.

7 THE COURT: Yes. Okay. I don't know what it means,  
8 either, at this point, but I do know, and as Mr. Dinh  
9 suggested, we do need to hear from the other six banks, and we  
10 need to hear from everybody that the left hand and the right  
11 hand are communicating internally.

12 MR. LOCKARD: Yes, your Honor.

13 MR. DINH: Your Honor, may I be heard on one thing I  
14 forgot to bring up?

15 THE COURT: Sure.

16 MR. DINH: The engagement in Mr. Zarrab's matter, as  
17 you will hear further from Mr. Brafman, but from the beginning  
18 and to this point has been as appellate and strategic counsel.  
19 We are responsible for the motions as well as any potential  
20 appeals. We were not retained nor do we anticipate to be  
21 examining witnesses, in preparation of the witnesses, and  
22 certainly not on cross examination of any bank witnesses, and  
23 so in large part, that takes care of the directly adverse issue  
24 under the professional rules.

25 THE COURT: Oh, no. You've lost me. I mean, you're

1 sort of compartmentalizing your representation and saying that  
2 because you're doing that, there's less likely to be a conflict  
3 and otherwise? I'm missing the point.

4 MR. DINH: Yes, your Honor. I think that under the  
5 rules in the commentary, especially under the 1.7B with respect  
6 to waivers, it is clearly an actual conflict if a law firm  
7 cross examines its own client for another client. That's not  
8 the case here, because any examination of the banks would not  
9 be done by Kirkland & Ellis.

10 MR. BRAFMAN: Your Honor, if I may. Generally, when  
11 the Curcio issue presents itself, normally, one of the ways  
12 it's cured is if there is someone on the defense team who has  
13 no relationship with any of the banks who is able to conduct  
14 the cross examination of a witness in an adverse capacity,  
15 perhaps because I think Mr. Dinh is correct that the rule does  
16 not permit -- the ethical rules do not permit a lawyer to cross  
17 examine his or her own client in an adverse capacity. And the  
18 understanding that we have come to among the defense lawyers,  
19 and that Mr. Zarrab has made clear, is that with respect to the  
20 actual trial, should these witnesses appear and should they be  
21 questioned, they would be questioned either by me or someone  
22 else on the defense team, but not by any person connected to  
23 Mr. Dinh's prior firm or his current firm.

24 THE COURT: So just while you're up, Mr. Brafman. The  
25 issue that I raised before, I'm just curious as to what you

1 think about that. Is the net of all of this Curcio proceeding  
2 that, among other things, Mr. Zarrab is knowingly and  
3 voluntarily waiving the right to argue or defend himself by  
4 saying that the banks are responsible for these transactions,  
5 or the banks told me that these transactions were okay, I'm  
6 just a businessman, and I'm just doing business? Is he waiving  
7 that right to argue that the banks are the culpable parties, so  
8 to speak, if the evidence were to lead in that direction?

9 MR. BRAFMAN: He is certainly not waiving the right to  
10 argue that he is not guilty of these charges because, as a  
11 business person, A, the law doesn't apply to him because he's  
12 not a citizen.

13 THE COURT: I get that.

14 MR. BRAFMAN: Second, with respect to the bank fraud  
15 charge, he is certainly not waiving his right to argue that the  
16 banks are not victims here, either because they suffered no  
17 loss or because they clearly knew that these transactions  
18 involved Iran, for example. But I don't believe that he is  
19 required to waive his right to question these witnesses. I  
20 think all he needs to do --

21 THE COURT: No, but you just said something quite  
22 important. So you're saying that he can argue that the banks  
23 knew the nature of these transactions. Is that what you're  
24 saying?

25 MR. BRAFMAN: He may have the right to argue that if

1 the underlying documentation or the testimony leads us in that  
2 direction. But what I was trying to indicate, your Honor, is  
3 that, should it be in this trial that a bank witness is -- a  
4 government witness is adverse in his direct testimony, for  
5 example as to Mr. Zarrab, he need not waive his right to cross  
6 examine them, all he needs to waive at a Curcio hearing is the  
7 fact that he does not believe there is a conflict by virtue of  
8 the fact that Mr. Dinh or his firm or firms represented the  
9 bank in another proceeding. And so long as the person who is  
10 going to be doing the questioning on his behalf are not members  
11 of the firm whoever represented the bank, there is a separate  
12 ethical conundrum that Mr. Dinh would face if he were required  
13 to cross examine a bank official in an adverse capacity.

14 THE COURT: I get that. Although when we get to the  
15 questions, it's not that clear to me that some of these areas  
16 are, in fact, sought from Mr. Zarrab as waivers. When we get  
17 to them, you'll let me know.

18 MR. BRAFMAN: I think if you allow Mr. Rimm and  
19 Mr. Zarrab to address the issue, I think Mr. Zarrab, from what  
20 I understand, is prepared this morning to waive any issue that  
21 would arise solely as a result of Mr. Dinh's representation of  
22 any of the banks who are charged as victims in this case. Not  
23 waiving his right to present any defenses with respect to the  
24 banks, because we are obviously -- that's the mix here, and I  
25 think Mr. Dinh's letters from the banks recognize that he is



1 part of a team that is defending Mr. Zarrab in this case.

2 THE COURT: I do. But I don't -- is that okay with  
3 Mr. Dinh? Are your clients, so far Bank of America and  
4 Deutsche Bank, they're okay with Mr. Zarrab saying, 'I didn't  
5 do anything wrong, I'm just a businessman. In fact, it was the  
6 banks who encouraged me to do these transactions.' And let's  
7 take it one step further, they even said that it was perfectly  
8 lawful. Your clients are okay with that happening?

9 MR. DINH: Your Honor, the waivers speak for  
10 themselves. I would not go much beyond that.

11 THE COURT: No. But you are esteemed counsel, and I'm  
12 trying to figure out what they mean so we don't have the people  
13 who wrote them here -- I'm just posing a -- I don't know where  
14 the evidence is going to lead, but are your banks okay with  
15 Kirkland & Ellis lawyers being part of this proceeding where  
16 that defense is raised by Mr. Zarrab?

17 MR. DINH: I believe that that is the import of the  
18 waivers, especially given all of the recitation of facts and  
19 allegations by the government. We obviously, as Mr. Lockard  
20 points out, we are not obligated nor able at this point in  
21 order to identify our trial defenses in that regard, but the  
22 waivers do recognize the potential conflict of interest as  
23 presented by the indictment and the allegations in the bank's  
24 knowing waivers.

25 THE COURT: But that's just a narrow view. Because as

1 Mr. Brafman and all of us know, that one never knows what comes  
2 out at a trial. And I'm raising a possibility. I have no  
3 idea, by the way, I'm not suggesting that this is a reality, but  
4 I have no idea if it's going to happen. But we'd be in a  
5 terrible position then, if there were evidence of the nature  
6 that I'm describing, I don't know what your position would be  
7 at that time.

8 MR. DINH: I think if you --

9 THE COURT: We can't have a waiver that's just limited  
10 to certain hypothetical facts as we're heading to a trial,  
11 which as you well know, every trial always has surprises,  
12 always has something different than -- so there's no actual  
13 roadmap that we can look at now that tells us exactly what's  
14 going to be said by whom at the trial. So the point is, we are  
15 going through this proceeding to make sure we don't have a  
16 problem down the road, and we can't just say that these waivers  
17 are limited to this fact that the government says that the  
18 banks are victims and it turns out that they're not victims.  
19 That would not be acceptable to me, actually. We have to be a  
20 little more flexible there and understand that the reality of  
21 trials is different than what we necessarily can predict today.

22 MR. DINH: Yes, your Honor. And I do not mean to say  
23 that the bank waivers are limited to one limited set of facts.  
24 They are fully apprised of all the facts in this case as we  
25 know them today, all the allegations that are made by the

1 government. They understand the scope of our representation  
2 and they have knowingly waived and consented to our  
3 representation of Mr. Zarrab in this regard. I think one --  
4 and each one of those waivers, one of those conditions is that  
5 no Kirkland & Ellis attorney would cross examine the banks'  
6 witnesses that may be presented. I think that in and of itself  
7 speaks that they have considered the potential ramifications  
8 that your Honor is addressing.

9 THE COURT: Okay. So then briefly, I'm going to turn  
10 to Mr. Rimm. As you know, I appointed him some week or ten  
11 days ago. I don't exactly remember. As I had indicated, which  
12 is common practice, we appointed him as CJA attorney on duty on  
13 that particular day to undertake as an independent person who  
14 has no relationship to this case otherwise to familiarize  
15 himself with the issue of these Curcio conflict issues and to  
16 speak with Mr. Zarrab, with the help of a Turkish language  
17 interpreter, and just to give comfort actually to the Court,  
18 and also to Mr. Zarrab, that there was this independent review  
19 of the conflict issues.

20 Mr. Rimm has sent me a letter dated November 29, 2016  
21 summarizing that he did that, and perhaps we could call on him  
22 to tell us what, in fact, he found.

23 MR. RIMM: Thank you, your Honor.

24 THE COURT: Before you start, I guess the new news  
25 that I heard today is probably new news to you, as well; that

1 is to say, that there are six other banks. I don't suppose you  
2 spoke to Mr. Zarrab about any other banks apart from Bank of  
3 America and Deutsche Bank.

4 MR. RIMM: That's correct, your Honor. The focus of  
5 our conversation yesterday was on the Bank of America and  
6 Deutsche Bank. The names of the other six banks are names with  
7 which I was not familiar until this morning. But having spent  
8 approximately two hours in a comprehensive conversation with  
9 Mr. Zarrab yesterday, I believe firmly that the answers that  
10 your Honor may pose to him in connection with the Court's  
11 Curcio inquiry will result in the same answers as to those six  
12 additional banks. Just to repeat quickly what my letter from  
13 yesterday says, Judge.

14 THE COURT: Yes.

15 MR. RIMM: Mr. Zarrab was fully engaged in our  
16 conversation from yesterday. He asked what I deemed to be  
17 appropriate questions. He provided answers to my questions in  
18 a manner that made me believe he understood the questions and  
19 all of the issues that we had reviewed and discussed. We went  
20 through in painstaking detail hypotheticals, examples set forth  
21 by the government in its two submissions, questions as amended  
22 by Kirkland & Ellis' letter from November 21st. We discussed  
23 the ethical wall, among other things. We also discussed the  
24 waivers from the two banks as laid out in Kirkland & Ellis'  
25 November 28th letter.

1 I did not reach a conclusion whether there is an  
2 actual or a potential conflict. I don't think that my  
3 appointment requires me to do so. But nevertheless, I think  
4 whether your Honor concludes it's actual or potential or  
5 something else, Mr. Zarrab is fully prepared today to answer  
6 your Honor's questions and, if your Honor concludes that there  
7 is either an actual or a potential conflict, he is prepared to  
8 proceed and to make a knowing and intentional waiver of his  
9 right to conflict-free counsel.

10 THE COURT: So that's the nature of his waiver is  
11 that -- Mr. Zarrab's, that is -- that he's prepared knowingly  
12 and voluntarily to waive the right to conflict-free  
13 representation, right? That's the sum and substance?

14 MR. RIMM: Yes, your Honor.

15 THE COURT: Okay, thank you.

16 By the way, the letters from the banks, Bank of  
17 America and Deutsche Bank, are each dated November 29, 2016.  
18 One is by a man named Andrew Stemmer, he's with Deutsche Bank,  
19 New York branch, and the other is with Mr. C. Paige Bobick, and  
20 he's with Bank of America. Those letters will have to speak  
21 for themselves for now, but we do need, as I say, the  
22 supplementation, and I'll ask the government and defense  
23 counsel to work together to get the supplementation with  
24 respect to the six other banks, and also, we'll call it the  
25 left-hand-right-hand issue, knowing what one segment of the

1 bank is doing be it known by the other segment of the bank.

2 We'll also need to hear further about the HSBC issue  
3 where the ethical wall is not -- I guess -- well, I don't know  
4 how to describe it, but there's no ethical wall it seems with  
5 respect to Mr. Clement and Mr. Dinh with respect to HSBC.

6 Anybody want to say anything else about the background  
7 before -- no.

8 MR. LOCKARD: No, your Honor.

9 THE COURT: Mr. Brafman?

10 MR. BRAFMAN: No, your Honor.

11 THE COURT: Just give me a moment. I'm just reviewing  
12 again the questions. I thought, Mr. Brafman, I would use your  
13 questions -- or the defense, rather -- maybe it's Kirkland &  
14 Ellis' proposed questions which are not uncommon or the ones  
15 that one would typically ask during a Curcio hearing. If you  
16 give me a minute, I just want to review one or two of them in  
17 light of the facts we've talked about today.

18 (Pause)

19 THE COURT: Mr. Lockard, here's a question for you.  
20 I'm now referring to your November 29 letter to me in which I  
21 solicited or elicited from you as a subject of a court order  
22 dated November 29, 2016 which I asked the government to provide  
23 additional information to the Court in advance of the Curcio  
24 hearing, and this is the letter in which you detailed many of  
25 these transactions and dollar amounts involving Deutsche Bank

1 and Bank of America. It seems to me that we're going to need  
2 something like that with respect to these six other banks, too,  
3 are we not?

4 MR. LOCKARD: Yes, your Honor. I think our letter  
5 already identifies how the banks are referred to, to the extent  
6 that they are referred to in the indictment, in Footnote 2 on  
7 page 2.

8 THE COURT: I've got that in front of me.

9 MR. LOCKARD: We can also provide similar information  
10 with respect to the aggregate transactions involving those  
11 identified entities for the other banks, as well.

12 THE COURT: But I wonder -- I'm really not  
13 wondering -- I'm wondering whether we're going to succeed, even  
14 theoretically, in proceeding with Curcio questions with respect  
15 essentially to two out of eight banks. It's like a partial  
16 Curcio hearing. It doesn't seem to me to make much sense.

17 MR. LOCKARD: I think that's right. I think you could  
18 accomplish part of the Curcio today, but I don't think we can  
19 accomplish all of the Curcio today.

20 THE COURT: Well, one would have to do the precise  
21 same questions with respect to six other banks at some other --  
22 so that -- I'm not sure that's the most efficient use of our  
23 time.

24 MR. LOCKARD: I think that's right, your Honor.

25 MR. DINH: Your Honor, we had advised Mr. Zarrah of

1 the other six banks and had obtained from him a knowing and  
2 written waiver with respect to those six banks. That was  
3 accomplished the day before Thanksgiving, so he's had plenty of  
4 time in order to appreciate that.

5 In the interest of judicial expediency, I would submit  
6 that the purpose of the Curcio hearing is for the Court to  
7 ascertain Mr. Zarrab's knowing and intentional waiver, knowing  
8 all the facts available to him.

9 We will, of course, in all good faith and with all  
10 delivered speed, obtain the position and consents from the  
11 other banks, but with respect to Mr. Zarrab, I'm not sure that  
12 that is the relevant inquiry.

13 THE COURT: I'm not entirely sure I agree with you in  
14 this regard. So in this sort of unusual situation, we have  
15 waivers on both sides, right? We have waivers from Mr. Zarrab  
16 and waivers, presumably, from the banks, and we also have, in  
17 the context of those waivers, which is, for example with  
18 respect to Bank of America and Deutsche Bank, the letter from  
19 the government dated November 29 which actually sets forth some  
20 of the transactions and the dollars amounts. So from my view  
21 of things, I would rather have context before conclusions  
22 rather than conclusions without context.

23 So for example, Mr. Zarrab would not be happy if two  
24 or three or four of the banks decided that they weren't going  
25 to do -- I'm guessing, I don't want to speak for Mr. Zarrab and



1 Mr. Brafman -- but I think we should have all of the context on  
2 the table before we impose on Mr. Zarrab and ask him if, in  
3 fact, he's waiving this whole body of transactions and eight  
4 banks. That just seems to me.

5 I hear what you're saying. I think possibly one could  
6 do it today in part and then do it in part again, but to me,  
7 it's better to have everything that we need, because that's  
8 just the way I view things, that we should have a fuller record  
9 and a fuller context before we ask him to make these waivers.

10 MR. DINH: I understand. Just one last point, your  
11 Honor.

12 MR. BRAFMAN: May I have one second, your Honor?

13 THE COURT: Sure.

14 (Discussion off the record)

15 MR. DINH: I appreciate your Honor's concern and  
16 caution. I'm advised that Mr. Zarrab is well aware of our  
17 representation of the other banks, as I've indicated to the  
18 Court, and is willing to waive his right with respect to those  
19 banks, also. Most significantly, your Honor, I think that the  
20 questions that the government proposed and the defense  
21 consented to does not presume a mutual waiver. That is, the  
22 questions as submitted to the Court does not assume that  
23 Mr. Zarrab's waiver is conditional upon a reciprocal waiver  
24 from the banks.

25 THE COURT: I thought the bank letters, or one of them

1 indeed, said something to that effect.

2 MR. DINH: But the Curcio -- and we have -- with our  
3 conditionality on the banks, that the banks as --

4 THE COURT: Am I right or wrong about that? So for  
5 example, Mr. Stemmer says, "The foregoing consent is also  
6 subject to the firm's receipt of a written consent from Zarrab  
7 to the firm's present representation of the bank and its  
8 subsidiaries and affiliates in connection with any and all  
9 matters in which the firm currently represents the bank or its  
10 subsidiaries and affiliates." By the way, Bank of America said  
11 the same thing. I assume these six other banks are going to  
12 say the same thing there, too, right?

13 MR. DINH: And that conditionality is met because we  
14 have that waiver from Mr. Zarrab and have or are in the process  
15 of providing it to those banks. My point is that with respect  
16 for the purpose of Curcio and the delicate balance between his  
17 right to counsel of choice versus his right to conflict-free  
18 counsel, the questions as propounded by the government and as  
19 acceded to by the defense, does not presume any such  
20 reciprocation; indeed, presumes quite the converse.

21 THE COURT: I get it. I get it. I'm not necessarily  
22 disagreeing with you. From my perspective, I prefer to have  
23 the context first and the conclusion, which is the Curcio  
24 questioning, after we see it all in front of us, just like we  
25 have with respect to these transactions. So maybe it's

1 excessive caution or maybe it's unnecessary, but we can't  
2 finish in any event, right? I don't think we reach a  
3 conclusion on Curcio hearing, I don't, until we get all of  
4 these consents from the six other banks or we jump over the  
5 ethical wall or whatever we're going to do with respect to  
6 HSBC. That needs all to be in place before I'm ready to make a  
7 determination. I think I'm going to wait.

8 How long would it take to get that context?

9 MR. LOCKARD: With respect to the financial  
10 information, the government can have that available within a  
11 day or two, and certainly by the end of this week.

12 THE COURT: Okay.

13 MR. DINH: I cannot make any representations because  
14 it's an independent third party, your Honor, that I cannot  
15 answer to. But we are making all progress, as you know, even  
16 preemptively before asked by the Court.

17 THE COURT: You know, just as I said in one of the  
18 orders, no Curcio, no nothing. You know what I mean? No next  
19 proceeding. We've got to get these issues resolved before we  
20 can take any next step and have a suppression hearing,  
21 et cetera, et cetera. I'm happy and was happy to come up with  
22 dates today, but to me, that hinges on when we can finish this  
23 business.

24 MR. BRAFMAN: Your Honor, we had suggested, and the  
25 government, I think, had -- the government indicated to us that

1 the 5th, which is the next scheduled proceeding, was not going  
2 to work because of witness unavailability, I believe, on their  
3 part.

4 THE COURT: I'm now prepared not to proceed on the  
5 5th.

6 MR. BRAFMAN: What I'd like to do, if your Honor would  
7 permit, I think we agreed on the 15th, subject to the Court's  
8 availability, as an alternative date for the hearing, and  
9 Mr. Dinh advises me that if we keep that date, that he believes  
10 he'll be able to get the additional waivers before that so the  
11 Court could conduct the Curcio on that morning. We could then  
12 move to the suppression hearing, and hopefully on the same day  
13 a brief Franks hearing, if your Honor agrees that we should  
14 have that.

15 THE COURT: While we're on the topic, how I was going  
16 to respond was to ask you about the 14th instead of the 15th,  
17 because it would be a better date to start this or do all of  
18 that.

19 MR. BRAFMAN: I believe that question should be  
20 addressed to the government. I think the 14th was a date that  
21 I believe was problematic for them, if I'm not mistaken. Let  
22 me just check before I do that. I believe I could do the  
23 morning of 14th. The 15th is a better day for me, as well.

24 THE COURT: Well, I'm going to suggest that you save  
25 both dates. The 15th is available. The 14th is in the morning

1 for you. How about the government?

2 MR. LOCKARD: We expect the witnesses to be available  
3 both days, the 14th and the 15th.

4 THE COURT: Let's say we'll adjourn, hopefully, the  
5 conclusion of the Curcio to the 14th of December at 9:30. I  
6 hate not to have a date -- can we say that by December 7 we'll  
7 have the information with respect to the other six banks, do  
8 you think?

9 MR. DINH: We will certainly try, your Honor. Again,  
10 if we cannot, we will come back to the Court with an  
11 explanation. But your Honor, may I? One question as to form.

12 THE COURT: Yes.

13 MR. DINH: We have viewed, as I think is consistent  
14 with the ethical obligations, the representation and consents  
15 by our clients is made to prevent Ellis as the law firm, and so  
16 we had, prior to your Honor's order of yesterday at noon, we  
17 had sent out the forms for consent to Kirkland & Ellis. I  
18 understand the Court -- those are to be addressed to the Court.  
19 May we ask for the Court's indulgence so we that don't increase  
20 the time in dealing with these complex organization that we  
21 will collect all of these consents addressed to Kirkland &  
22 Ellis and then put them all in a cover letter to the Court with  
23 a representation that they are made to the Court, also?

24 THE COURT: Yes. Or if they haven't been done yet, so  
25 they can --

1 MR. DINH: If they have not been done, we will take  
2 every effort to make them addressed to the Court.

3 THE COURT: Or you can CC the Court. Doesn't sound  
4 like any of them have been done, but yeah, that would work as a  
5 fallback. I would prefer it in the same fashion that we got  
6 the Bank of America and Deutsche Bank. I'll work with you on  
7 that.

8 MR. DINH: Thank you, your Honor.

9 MR. BRAFMAN: There are a number of other, I think,  
10 important issues that we would like to address to the Court,  
11 but is the Court determined not to proceed until the Curcio  
12 issue is resolved? Because these issues really don't directly  
13 impact on Kirkland & Ellis.

14 THE COURT: I'm happy to hear you on this issue of  
15 compartmentalization, for example. I'm happy to also talk  
16 scheduling in terms of the hearings and dates and the trial  
17 date. I don't know if you had other things in mind. Did you  
18 have more in mind than those items?

19 MR. BRAFMAN: I don't believe I do. Other counsel may  
20 want to ask the Court to address another issue, but let me, if  
21 I can, your Honor, since we are here and the Court has made  
22 yourself available, if we can, let's address the other issue,  
23 which I don't believe is an issue.

24 I think the issue of compartmentalization among  
25 defense counsel was created as a result of a comment I made at

1 an informal meeting with the government several weeks ago. So  
2 that it's clear, there was and continues at this point to be  
3 several -- there are several different law firms involved in  
4 this case, and because of the breadth of the work to be done,  
5 we have essentially, among ourselves, delegated certain work to  
6 one firm or another. But since the Court appointed me de facto  
7 lead counsel, I have done everything humanly possible, with the  
8 assistance of Mr. Kirshner and Mr. Agnifilo, to keep abreast of  
9 everything that was happening. I was aware, and so was  
10 Mr. Zarrab, that one or another of the lawyers involved had met  
11 with the government, or certain government lawyers, in an  
12 effort to see if there was a way to resolve this case in a  
13 manner acceptable to him, because of his status as a noncitizen  
14 and our belief that there were jurisdictional issues, and there  
15 are discussions that I was not present at where other lawyers,  
16 I think, raised one or more of those issues with government  
17 lawyers.

18           Shortly after those meetings, I became completely  
19 aware of them. But in the meeting with the government where we  
20 were really meeting to discuss scheduling and discovery, as an  
21 aside, as I was leaving, in a passing comment I did direct the  
22 question to the line assistants, in addition to the people  
23 here, just asking, and almost in a comical way, "Have there  
24 been any negotiations with your office that I'm not aware of?"  
25 And I think the response was that I should address those

1 questions and words of substance to my colleagues, which I did.  
2 I knew that meetings had taken place. I was not there.  
3 Shortly thereafter, I spoke with the lawyers and I was fully up  
4 to speed, and I briefed my client on it.

5 I also tell you that these lawyers spoke directly to  
6 Zarrab and then to me, and I really don't believe there is any  
7 issue whatsoever in terms of Mr. Zarrab ever being able to  
8 claim that there's something going on here in the defense team  
9 that he doesn't know about. And I think if you're asking is he  
10 prepared to say I have different lawyers, I believe they are  
11 communicating, and I waive any possible issue that could arise  
12 with respect to a claim of either ineffective assistance of  
13 counsel or uninformed counsel, I believe he's prepared to waive  
14 that claim today.

15 I submit to you, as an officer of the court, that  
16 there is no issue. I have taken the responsibility in large  
17 measure, together with cocounsel, of having full and frank  
18 discussions with Mr. Zarrab, have met with him many, many  
19 times, despite the hardship involved in having those meetings  
20 while he is remanded, and I think he is up to speed on all  
21 aspects of any discussions by any lawyers with any government  
22 lawyers.

23 THE COURT: I'm going to ask the government if they  
24 have any response to what you've just said, but would you also,  
25 while we're hearing from the government, assuming they do want



1 to say anything, would you look over that proposed list and see  
2 which, if any, of those questions you and Mr. Zarrab feel  
3 comfortable responding to?

4 MR. BRAFMAN: If I may have just one minute, your  
5 Honor?

6 THE COURT: Yes.

7 MR. BRAFMAN: Your Honor, this list was between  
8 Mr. Rimm and Mr. Zarrab, as well. I think he did discuss this  
9 issue with him, and he is prepared to report to you that  
10 Mr. Zarrab also understands it and is willing to waive. Your  
11 Honor, the difficulty with the list is we think some of the  
12 questions just aren't appropriate to ask of a defendant. I  
13 want to make sure I'm looking at the same --

14 THE COURT: The nine questions?

15 MR. BRAFMAN: Yes. Your Honor, with respect to the  
16 nine questions, I have no objection to your Honor asking  
17 Mr. Zarrab questions 1, 2, 3, 4, and 5. I understand that some  
18 lawyers feel that 6, 7, 8, or 9 create questions that I don't  
19 think the defendant is required to answer once he's answered  
20 questions 1 through 5.

21 THE COURT: Let me hear from the government if they  
22 agree or if they disagree. Particularly, I'm going ask you  
23 again, Mr. Brafman, how about question 8?

24 MR. BRAFMAN: I think there is one question that your  
25 Honor could phrase after question 5, and that is, "Do you

1 understand that by having different lawyers who are involved in  
2 different aspects of this case you are waiving any claim of  
3 ineffective assistance of counsel in the event you were to  
4 concludes that lawyers did not fully communicate with each  
5 other?" I think that's really the main issue of the day, that  
6 he's not going to be able to raise an issue of ineffective  
7 assistance of counsel by virtue of the fact that he has a  
8 number of different lawyers who are handling different parts of  
9 this case. If you get an affirmative response to that  
10 question, I really think the issue is settled, Judge.

11 THE COURT: You still think 8 or 9 are not compatible  
12 with what you just said?

13 MR. BRAFMAN: Because there's no evidence to suggest  
14 that any of the lawyers are operating in a way that is not in  
15 Mr. Zarrab's best interest and assumes something that's  
16 inappropriate.

17 THE COURT: I see.

18 Mr. Lockard.

19 MR. LOCKARD: Yes, your Honor. I'm not appreciating  
20 the nuance between the written question 8 and Mr. Brafman's  
21 proposal.

22 THE COURT: I'll tell you what. Why don't we go off  
23 the record for a minute and see if you can't come up with a  
24 question that's not.

25 MR. BRAFMAN: Your Honor, if your Honor wants to go

1 through 1 through 5 and then ask 8, then I don't have a problem  
2 with 8 if we stop it at the end of the noneffective assistance  
3 of counsel, period, because that's really the issue. I think  
4 the add-on is just inappropriate.

5 MR. LOCKARD: I don't think the government has any  
6 objection to the proposed edit to question 8. I think we do  
7 also think that number 9 is sort of the ultimate Curcio  
8 question, and we think number 9 is also appropriate.

9 MR. BRAFMAN: Your Honor, number 9 is just a  
10 repetition of all the other questions. The fact is, he has  
11 different lawyers. He understands that they are handling  
12 different aspects of his case. He's waiving any claim that he  
13 was denied or would be denied the effective assistance of  
14 counsel. If he were to determine that the lawyers were not  
15 properly communicating with each other, which I respectfully  
16 indicate that they are, in any event, and he's here hearing me  
17 say that, and he's discussed this issue with independent  
18 counsel.

19 THE COURT: It may be a little repetitious, but it  
20 doesn't look, having heard what I've heard, like a question  
21 that we shouldn't ask. So 8 as edited, and 9 as it exists.

22 MR. BRAFMAN: Your Honor, just so it's clear, this is  
23 not a football team where you have separate players who have  
24 separate responsibilities on each play and is supposed to cover  
25 a particular issue. This is a moving defense team.

1 THE COURT: As I understood. I think that is the  
2 point that the government was making, that this notion of  
3 compartmentalization was that different players, if you will,  
4 have different assignments, and I think he's concerned, rightly  
5 or wrongly, that as a result of that, there may not be  
6 communication, or there may be actually a difference of  
7 approach by different lawyers.

8 MR. BRAFMAN: Judge, I'm not going to fight you if you  
9 want to ask that question, I just want your Honor to  
10 understand --

11 THE COURT: I'm not suggesting that there is that  
12 problem, but it's been put on the table.

13 MR. BRAFMAN: But I want the Court and the government  
14 and Mr. Zarrah to hear at the same time --

15 THE COURT: Okay.

16 MR. BRAFMAN: -- the assignments are not set in stone,  
17 and sometimes the responsibilities overlap. For example,  
18 although Mr. Dinh's firm may be drafting a response, I  
19 ultimately review it, Mr. Kirshner and I submit suggestions,  
20 recommendations, sometimes the product is a combination of  
21 input by a number of different firms, Ms. Chung, Mr. Wolfson.  
22 There are other people who have input into something. So even  
23 though they have the assignment of doing written work, we're  
24 all participating in the end product. Just like today, I'm  
25 speaking on behalf of the team, I'm going to be raising issues

1 that we have collectively discussed with Mr. Zarrab, so it's  
2 really not fair to pigeonhole.

3 I think the issue of the day is if you have more than  
4 one lawyer and you are assuming that they work cooperatively in  
5 your best interest, which I represent we are, do you waive any  
6 potential conflict of interest issue as to ineffective  
7 assistance of counsel by virtue of having more than one lawyer  
8 in a case? I think that's the ultimate question.

9 If your Honor is more comfortable asking question 9,  
10 then I'm not going to strongly oppose it.

11 THE COURT: Mr. Lockard.

12 MR. LOCKARD: Yes. I'll take the podium.

13 THE COURT: Does that work for you?

14 MR. LOCKARD: That works for the government. And with  
15 the Court's permission, I'll add just a couple of background  
16 comments just in the interest of making sure that the record is  
17 clear.

18 THE COURT: Okay.

19 MR. LOCKARD: Again, I'll be brief. I think this is  
20 an issue that the government thought it appropriate to raise  
21 because of a couple of examples where we thought that the  
22 concerns had, in fact, played out.

23 We understand that Mr. Zarrab has retained a large  
24 team of attorneys and that it may be perfectly efficient and  
25 sensible for him to organize that team in different ways and to

1 have them carry out different tasks at different times. But  
2 there had been, at least on some occasions, discussions between  
3 certain of Mr. Zarrab's attorneys and the government where we  
4 were advised explicitly that only certain attorneys were aware  
5 of either the topic of conversation or the fact of the meeting,  
6 which may be a perfectly rational decision for Mr. Zarrab to  
7 make, but one that we thought warranted making sure that the  
8 record was clear that he had, in fact, made that decision and  
9 was aware of the fact that it can create risks, as in any team  
10 that approaches the size of an organization, that one part of  
11 the team may have information that would be helpful to another  
12 part of the team, there has to be effective communication  
13 between them in order to make use of it, or if different parts  
14 of the team are pursuing strategies that could be intentioned  
15 with each other, then that could undermine the effectiveness of  
16 either or both of those, so we thought it warranted making sure  
17 that the record was clear that Mr. Zarrab was intentional about  
18 that setup.

19 THE COURT: What I'm going to do is swear in  
20 Mr. Zarrab. I'm going to ask him questions 1, 2, 3, 4, and 5,  
21 8 as edited by Mr. Brafman, and question 9 in an effort to  
22 respond to everybody's concern on this.

23 MR. BRAFMAN: Your Honor, they're just switching  
24 interpreters.

25 THE COURT: Sure.

1 (Defendant sworn)

2 THE COURT: Mr. Zarrah, you've heard the conversation  
3 this morning, and I'm going to ask you a series of questions  
4 relating to this latter discussion that we've been having.

5 First, do you understand that you have hired a large  
6 number of attorneys to represent you in this matter?

7 THE DEFENDANT: Yes.

8 THE COURT: And by "large", I think we're talking  
9 about 14 -- there are some 14, or approximately 14 attorneys  
10 representing you.

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Second, do you understand that if you  
13 direct different attorneys who are representing you to pursue  
14 different strategies, those strategies might conflict?

15 THE DEFENDANT: I understand, your Honor.

16 THE COURT: Third, do you understand that if you  
17 instruct that certain aspects of your trial strategy are not to  
18 be shared with all of your attorneys, those other attorneys may  
19 pursue other avenues that conflict with the aspects of your  
20 trial strategy that they do not know about?

21 THE DEFENDANT: I'm aware, your Honor.

22 THE COURT: And fourth, do you understand that during  
23 the course of preparing your case for trial, it has been  
24 necessary and will continue to be necessary for your attorneys  
25 to confer with the government and the Court about your case?

1 THE DEFENDANT: I understand, your Honor.

2 THE COURT: Five, do you understand that if different  
3 attorneys who represent you are inconsistent in their  
4 communications with the government and the Court about your  
5 case, it may harm your interests?

6 THE DEFENDANT: I understand, your Honor.

7 THE COURT: Then the next question is this, do you  
8 understand that by giving instructions to your lawyers about  
9 how to proceed with your case you are waiving, assuming there  
10 were a conviction, any post conviction argument on appeal or  
11 otherwise that you were denied effective assistance of counsel?

12 THE DEFENDANT: I understand, your Honor.

13 THE COURT: The last question I want to ask you is, do  
14 you waive any post conviction, assuming there were a  
15 conviction, argument on appeal or otherwise that by virtue of  
16 assigning different responsibilities to different lawyers on  
17 your team, you were denied effective assistance of counsel by  
18 them?

19 THE DEFENDANT: I understand, your Honor.

20 THE COURT: Thank you very much. I appreciate that.

21 Mr. Brafman, I would turn next to scheduling. I don't  
22 know if you were suggesting that somebody else wanted to raise  
23 some other issue before scheduling?

24 MR. BRAFMAN: I think Mr. Rimm just wants to verify  
25 that he discussed this issue of different counsel with



1 Mr. Zarrab independently.

2 MR. RIMM: May I have a moment, your Honor?

3 THE COURT: Sure.

4 (Discussion off the record)

5 MR. RIMM: Your Honor, I just want to note for the  
6 record, as my letter from yesterday indicated, that I discussed  
7 these issues of compartmentalization with Mr. Zarrab, and he  
8 was prepared to go forward today, and actually requested that  
9 he go forward today.

10 I do have one question for the Court, while I'm  
11 standing up, if I may.

12 THE COURT: Yes.

13 MR. RIMM: Does your Honor wish for me to meet with  
14 Mr. Zarrab again in connection with the six other banks?

15 THE COURT: It's really a question for you. That is  
16 to say, so the preparation that you did with him up until now  
17 with respect to the Bank of America and Deutsche Bank, do you  
18 feel that there is more to discuss with him specifically with  
19 respect to these six other banks? Before you answer, do you  
20 want to see what those six other banks submit before you answer  
21 that question?

22 MR. RIMM: I'm happy to defer making a decision until  
23 I receive the submission from Kirkland & Ellis, but I do  
24 believe that, because of how comprehensive our discussion was  
25 yesterday, another meeting will not be necessary.

1 THE COURT: Perhaps you, at the time that you do get  
2 to review and see these other submissions, you could send me a  
3 letter that says, if this is the case, that nothing in these  
4 submissions detracts from your conversation, or there's no need  
5 for further conversations because these issues have been  
6 covered before.

7 MR. RIMM: Very well, your Honor.

8 MR. BRAFMAN: Judge, if I may. In order of, I think,  
9 scheduling, I think we've set the morning of September 14th and  
10 15th for the suppression with respect to the iPhone, and I  
11 would also like to briefly address the need for a Franks  
12 hearing and ask the Court to consider, if you grant the Franks  
13 hearing, to hold it immediately after the suppression hearing.

14 The government, with respect to the suppression  
15 hearing, has offered several affidavits which are the direct  
16 testimony of several agents. They have essentially taken the  
17 position that they cannot identify the customs agent who is  
18 alleged to have taken the pass code from Mr. Zarrab on two  
19 occasions while he was being interviewed by border patrol.

20 They have also told me that they do not intend to  
21 contest the accuracy of Mr. Zarrab's affidavit that he put in  
22 in support of the search warrant.

23 The reason I want to ask you to consider allowing me  
24 to call Agent Geissler, which the government objects to, is  
25 because he is the key agent who I believe helped coordinate all

1 of the matters that occurred on March 19th at the Miami  
2 airport. He is the agent who advised Mr. Zarrah of his rights  
3 on the brief videotape that I think we've all seen, and shortly  
4 after the videotape is turned on and Mr. Zarrah asks for a  
5 lawyer. It's also, I think, Agent Geissler who is involved at  
6 a later point during the processing of asking Mr. Zarrah for  
7 the information that we believe to be inappropriately obtained  
8 after he invoked his right to counsel with respect to his  
9 holdings, his business assets, and his business and banking  
10 relationships.

11 The government has taken a position that that all came  
12 in as routine processing. I believe I have a right to question  
13 Mr. Geissler on those issues, and I believe, just based on the  
14 information we have already been provided by the government, I  
15 think brief questioning of Mr. Geissler will, I think, produce  
16 information that I think the Court should hear before ruling on  
17 the motion to suppress.

18 THE COURT: Just so you know, I agree with you. The  
19 ruling is that you may, if you wish, call Mr. Geissler.

20 MR. BRAFMAN: Thank you very much, your Honor.

21 THE COURT: You're talking about the so-called, the  
22 first portion -- the first suppression hearing.

23 MR. BRAFMAN: Yes, sir. The suppression hearing, as  
24 you already ordered, so I'm permitted to call Mr. Geissler.

25 THE COURT: Yes.

1 MR. BRAFMAN: I would also ask, since we're starting  
2 on the 14th, that the government produce, as soon as possible,  
3 because they were supposed to have the hearing on the 5th and  
4 now it's the 14th, but I believe they are supposed to produce  
5 whatever 3500 material is appropriate for the hearing, and that  
6 is any reports filled out by the customs agent or the FBI  
7 agents who are involved in the processing.

8 I'm not looking to do a fishing expedition, and if  
9 they want to provide only the three or two of the reports  
10 prepared by Agent Geissler with respect to the processing, I'll  
11 accept that, but I think I should be entitled to the  
12 3500 material prior to the hearing.

13 THE COURT: Why don't you talk to the government and  
14 see if you can't work that out.

15 MR. BRAFMAN: I will, your Honor. I think, in  
16 substance, they have agreed, and now that your Honor has  
17 ordered that I can question Agent Geissler, I think we'll make  
18 progress without bothering the Court.

19 Your Honor, I want to briefly be heard. I know we've  
20 written on it, and if the Court needs further written  
21 submissions we'll try and expedite it, but the Franks hearing,  
22 just so the Court understands, is going to be very brief. It's  
23 one witness. It's agent McReynolds. It's her affidavit that  
24 is in question. It's her affidavit that was relied on by the  
25 magistrate to issue the warrant that allowed them to search the

1 defendant's emails. It's, I think, impossible to do this  
2 entirely on papers, and I promise the Court that the entire  
3 questioning of Agent McReynolds would take between half hour or  
4 an hour, at most, and can be done immediately after the  
5 suppression hearing starts.

6 THE COURT: Expediency has really never been a  
7 motivating factor for me. Whether you're entitled to that  
8 hearing or not, I have to decide, I will decide that. Whether  
9 it's a half hour or three days, if you're entitled to it,  
10 you'll get it. If you're not, I'll indicate why not.

11 MR. BRAFMAN: Okay.

12 THE COURT: I'm not concerned about long or short or  
13 anything.

14 MR. BRAFMAN: Okay.

15 THE COURT: I was planning to ask you, and the  
16 government as well, so the briefing is very helpful. The  
17 government raised, as you know, in court and in its  
18 correspondence, the issue of inevitable discovery, and I was  
19 going to ask, and will ask you now today, for a supplemental  
20 briefing. Really, I don't think we need more than five pages  
21 each side, you know, probably double-spaced, but it would be  
22 helpful to have some citations just so I get a feel for what  
23 would be argued if we ever reached the issue of inevitable  
24 discovery.

25 MR. BRAFMAN: Yes, your Honor. We'll try and submit

1 that as quickly as possible.

2 Your Honor, I want to talk respectfully about  
3 scheduling. And if your Honor wants to tell us on the 15th  
4 what your thinking is, I just want to alert you to a problem  
5 that has arisen primarily as a result of the government's  
6 superseding indictment. I'm not saying this in a critical  
7 fashion, but it was more than eight months after the  
8 defendant's arrest that we became aware of a superceding  
9 indictment. He was arrested in March, and I think we got the  
10 indictment last month. In my math, it's eight months since  
11 March, or close to it.

12 Your Honor, while the government maintains that that  
13 indictment doesn't substantially change the playing field, it  
14 adds a defendant, who I don't believe they're ever going to  
15 produce, and yet we are going to be burdened with defending  
16 that part of the case. It adds an entity called Mahan Air,  
17 which we have never searched for in our initial attempt to get  
18 a handle on the materials that are voluminous, and I will  
19 represent to the Court that I believe, in hiring computer  
20 experts who used our search terms, they reviewed hundreds of  
21 thousands, if not millions, of emails, wire transfers receipts,  
22 and other documentation, and I believe the defendant has spent  
23 more than a million dollars on these computer experts, and now  
24 they are telling us that there has to be new search terms with  
25 respect to Mohammad Zarrab, and also who has been added as a

1 defendant with respect to Mahan Air. And just so the Court  
2 understands, many of these documents are in farsi. They have  
3 to be translated by the computer people who hire farsi experts,  
4 and it's a very time-consuming process, and lawyers on our team  
5 have spent literally hundreds of hours in actually analyzing  
6 these materials.

7 It's impossible to look at just one email, you have to  
8 go back and look at a chain, then you have to look at who the  
9 other people are who are copied. So I don't want to burden the  
10 Court, but it's a very, very complicated issue.

11 I've spoken to the government about the need to  
12 adjourn the trial date. The government has graciously told us  
13 that they would accept a reasonable application, and I think we  
14 even discussed as much as a four-month adjournment of the  
15 January trial date as something that they would consider  
16 reasonable. But herein lies the problem. In addition to  
17 reviewing the materials, it now becomes apparent that, although  
18 two members of the defense team -- one of my associates and  
19 Ms. Chung -- actually traveled to Turkey and interviewed  
20 certain people, that there are a whole new slew of people who  
21 may have to be interviewed. We may ultimately decide, after  
22 interviewing them, that we're going to need Rule 15 depositions  
23 whether the government is able to travel to Turkey or not,  
24 because several months ago they were under the direction they  
25 weren't permitted to travel to Turkey. So we might be able to

1 do it by Skype or some type of a videoconferencing, but this is  
2 a very laborious, cumbersome, time-consuming process.

3           So when I represented to the Court that I would be  
4 available for a January 23rd trial date, I did so recognizing  
5 that that is an obligation to your Honor that has caused me to  
6 turn away other potential trial dates that would conflict,  
7 because whatever else someone might say about me, I always show  
8 up on the day of trial, and intended to do so on January 23rd.  
9 Because we had a January 23rd trial date, which I thought would  
10 certainly be over within four, six, eight weeks at the outside,  
11 because the government, I think, has estimated their length of  
12 the case to be three weeks, depending on stipulations, I think  
13 we estimated one week defense case, so I have accepted other  
14 trial commitments into the late spring, early summer. I also  
15 have a personal family obligation that's out of the country.

16           What I'm going to ask -- and I know this sounds like a  
17 lot -- I'm requesting that your Honor consider adjournment of  
18 the trial date until the Fall of 2017 after the holidays that  
19 are in late September and early October so we don't have to  
20 interrupt the proceedings.

21           Now, I point out, which is obvious, that the defendant  
22 is in remand. So certainly, if anyone is prejudiced by this,  
23 it is him. It's hard for me to understand any substantial  
24 prejudice to the government other than their obligation to  
25 resolve these matters expeditiously, but the onus here, your



1 Honor, is on their decision to supersede.

2 I will tell you that, while they will claim that it  
3 doesn't change the case in any dramatic fashion, I beg to  
4 differ. By injecting the Hezbollah entity into this indictment  
5 and tying it to Mr. Mohammed Zarrab, and as a coconspirator  
6 ultimately trying to tie it to my client, it changes the  
7 dynamics of this trial. And as an experienced trial lawyer,  
8 it's hard for me to conceive of what kind of greater prejudice  
9 you can inject into a trial that was a sanctions case and now  
10 turning it into what the average potential juror may decide is  
11 a case that involves supporting terrorism.

12 While the government in its response says, well, you  
13 always had NIOC in this group, and everyone knows that that's  
14 an Iran sponsored organization, I don't think if you ask the  
15 average person on the streets of Manhattan what NIOC is anybody  
16 would know. But if you ask them what Hezbollah is, certainly  
17 most of the people would immediately identify it as a terrorist  
18 organization.

19 So if we try this case now, I think, among other  
20 things, I would, for the first time since I've been in this  
21 case, actually consider whether we would need to use an  
22 extended questionnaire in jury selection because of that issue,  
23 whether I would need to do polls and we would need to bring in  
24 a jury consultant. This is a very vicious issue that is now in  
25 the case.

1 I also think there's going to be additional briefing  
2 that we're going to have to do, because we think the case  
3 against Mohammed Zarrab should be severed. He's not going to  
4 be here for the trial, unless the government surprises  
5 everybody here. And by injecting him into the case, they've  
6 complicated our job dramatically.

7 So we both agree that the January 23rd trial date, by  
8 consent, if I were available, could be adjourned for four  
9 months. My unavailability is because we really had a hard  
10 trial date of January 23rd that I believe I had a right to rely  
11 on, and now I have a hard trial date in June that I cannot  
12 avoid, because I promised the Court and the Court directed me  
13 not to take anything that conflicts with that case, and I have  
14 a personal issues in May.

15 THE COURT: So you're talking about when? September,  
16 October?

17 MR. BRAFMAN: I think we're talking about mid-October.  
18 I can send you the actual dates. I think some of the holidays  
19 begin in late September, but some of the holidays that I  
20 observe continue into the beginning of October. But I think it  
21 would be October. And I think, given that the defendant is  
22 remanded and this is his request, because he only gets one shot  
23 at a trial and he wants to have his lawyers fully prepared,  
24 he's willing to spend another nine months incarcerated, if it's  
25 required, in order to, one, have me be the trial lawyer, or

1 two, be fully prepared.

2 Now, the alternative, Judge, and I don't want this,  
3 but I'm suggesting that if we can't come to some accommodation,  
4 I would then have to ask your Honor to relieve me, and I would  
5 then need to confer with Mr. Zarrab about replacing me. I've  
6 spent an enormous amount of time already in this case, and to  
7 have a new lawyer come in, my guess is any good lawyer is going  
8 to ask you for a six-months' adjournment because he would have  
9 to start from ground zero with respect to all of the materials  
10 that I've already reviewed and the issues I've litigated.

11 THE COURT: Let me hear briefly from the government.

12 MR. LOCKARD: Thank you, your Honor.

13 Mr. Brafman is correct about several things that he  
14 said. The first is that the government has advised defense  
15 counsel that we certainly would consent to a reasonable  
16 adjournment of the trial date in order that Mr. Zarrab and his  
17 defense team are fully prepared to participate in the trial.  
18 We don't think that an adjournment until mid-October is a  
19 reasonable adjournment for several reasons. The first is,  
20 Mr. Brafman, again correctly, anticipated our position that we  
21 don't think that the superceding indictment is a game-changer,  
22 as Mr. Brafman noted. It added one defendant into the  
23 already-existing charges. It added some overt act allegations  
24 relating to a new entity. And when I say "new", I just mean  
25 not previously discussed in the indictment, but still an entity

1 that, in the government's view, was within the scope of the  
2 offense conduct even before the second superceding indictment  
3 was returned.

4 The new entity, Mahan Air, is an Iranian commercial  
5 airline that has been designated by the U.S. Government and  
6 others, because of its role in providing support for the  
7 Islamic Revolutionary Guard Corps, Hezbollah, and other  
8 terrorist organizations, that is not the only time that  
9 terrorism comes into this place.

10 This indictment is based on offense conduct that is a  
11 sanctioned violation for the Islamic Republic of Iran, which is  
12 on the sanctions list, among other reasons, because it is the  
13 world's leading state sponsor of terrorism, including  
14 Hezbollah, including Hamas, including the Islamic Revolutionary  
15 Guard Corp. and the Quds force. So terrorism has always been  
16 an underlying issue in any sanctions case involving Iran. We  
17 don't think that the addition of yet another entity that is  
18 involved in that conduct and has been designated as a result of  
19 that changes the overall tenor and nature of the charges or of  
20 the evidence. The indictment already included allegations, for  
21 example, concerning entities that had been designated because  
22 of their support for weapons of mass destruction programs.

23 Now, to the extent that the defense team does need to  
24 refocus their preparation efforts, that is certainly related to  
25 an issue that has been the topic of discussion both at prior

1 conferences and between government counsel and defense counsel.  
2 We have, since the last time it was discussed on the record, we  
3 have met again with defense counsel to talk about ways in which  
4 the government can help to facilitate the defense's review of  
5 the discovery and to be more efficient and effective in  
6 preparing for trial.

7 As a result of that, the government has spent  
8 considerable amount of time since then beginning to prepare,  
9 essentially, rough draft exhibit lists so that we can be in a  
10 position to provide with specificity the body of emails and  
11 other documents that we think are going to be particularly  
12 relevant for trial preparation, and we hope to be in a position  
13 to start providing those to defense counsel in the near future.

14 All of which is to say, while we certainly agree that  
15 the defense should have as much time as is reasonably required  
16 to prepare for trial, we don't think that a nine-month  
17 adjournment of the trial date is a reasonable one. We think  
18 that an adjournment of approximately two to three months or  
19 four months, if that's what works for everybody's calendar,  
20 would be a reasonable adjournment, and that's something that we  
21 would consent to. But we would ask the Court to take a hard  
22 look at everyone's schedule and see if we can find a sufficient  
23 trial window within that time period rather than kicking this  
24 over until mid to late Fall of 2017.

25 We think it's also important because the public does

1 have an interest in a speedy and public trial of this matter,  
2 as in any prosecution. I think that's especially true in this  
3 particular matter, which is a case that involves a somewhat  
4 greater level of public interest. It certainly has drawn more  
5 public interest. We think the public interest in a speedy  
6 trial is greater, both because of the nature of the charges and  
7 the interest that the public has already expressed, as well as  
8 the fact that there have been, among other things, allegations  
9 in this case of political motivations or political conduct by  
10 branches of the government that are supposed to be impartial  
11 and apolitical, and we think that that is an interest that also  
12 is worth vindicating in a speedy trial.

13 MR. BRAFMAN: Your Honor, just very briefly. First of  
14 all, I checked the calendar, and if the Court were to grant the  
15 adjournment, I'd be looking at Monday, October 16th, if the  
16 Court were to agree.

17 I must say that it is hard for me to accept the  
18 government's interest in speedily resolving these matters when  
19 they waited nine months or eight months before filing the  
20 superseder. That's what is causing this delay, your Honor. We  
21 were not going to ask for an adjournment of the January 23rd  
22 trial date, but then we got the superseder. I agree we met,  
23 they agreed to help us with looking at certain exhibits, but I  
24 can't be bound by their exhibit lists as the roadmap through  
25 this case, and I do think that it's going to require travel by

1 at least some members of the defense team to try and figure out  
2 who this new defendant is, other than the fact that he happens  
3 to be the defendant's brother.

4 One of the things we're trying to work very hard to  
5 establish is that what I think has happened here is the  
6 government has tried to make Mr. Reza Zarrab criminally  
7 responsible for everything that may involve other members of  
8 the Zarrab family, but not him personally, and trying to  
9 extricate him from that is a very time-consuming,  
10 detail-oriented process. The reasonableness of the adjournment  
11 request is not because I'm suggesting that we need eight or  
12 nine months to fully prepare, what I'm suggesting is that we  
13 need at least four months or five months, and then we run up  
14 against my other commitments that are now problematic, not  
15 because of anything I've done, but because the government has  
16 changed the playing field. This isn't our fault, Judge.

17 THE COURT: The principal consideration in terms of  
18 speedy trial, or a principal consideration, is the defendant,  
19 who is obviously, as Mr. Brafman said, incarcerated. So if he  
20 wishes, if he feels that it's appropriate, I'm going to go  
21 along with that. I'm going to say October 16 for trial.

22 Mr. Brafman, we do have to work in in September,  
23 October a pretrial conference, at least tentatively scheduled  
24 now, and if there's to be more, then I'm sure I'll hear from  
25 you. When, reasonably, would that be? That would normally be

1 at least two or three weeks before the trial.

2 MR. BRAFMAN: Your Honor, may I suggest, now that we  
3 have this trial date, we confer with the government by email  
4 and then submit a joint letter in which to provide --

5 THE COURT: That's fine. So you need to provide a  
6 date for pretrial conference, also for trial submissions,  
7 pretrial submissions.

8 MR. BRAFMAN: Motions in limine, request for charge.

9 THE COURT: You'll work that into your letter, as  
10 well. Okay?

11 MR. BRAFMAN: Yes, sir.

12 THE COURT: What I would like, going back to our more  
13 immediate schedule, is by December 5 to have a letter  
14 application or a letter from the government with respect to  
15 inevitable discovery. I don't think you need more than five  
16 pages with citations, and then by December 7 to have a response  
17 from the defense to that issue of inevitable discovery. We've  
18 said before that December 7 is the target date for information  
19 about other banks. We also said December 14 to conclude,  
20 hopefully, this Curcio aspect and to commence the suppression  
21 hearing, if we need to, and we may go over to December 15.

22 In between, I will give you a ruling or some sort of  
23 heads up with respect to the Franks issue.

24 MR. BRAFMAN: Thank you.

25 THE COURT: Speedy trial issue or application that



1 would take us to October 16, 2017.

2 MR. BRAFMAN: Your Honor, just because we've been very  
3 careful on everything else, I would like you to pose a question  
4 directly to Mr. Zarrab on the record that he consents to an  
5 adjournment of the trial date to October 16 and waives his  
6 speedy trial claims between now and that date.

7 THE COURT: Do you understand that, first of all,  
8 Mr. Zarrab?

9 THE DEFENDANT: Yes, your Honor.

10 THE COURT: And is it so that you do wish to adjourn  
11 the trial to October 16, 2017?

12 THE DEFENDANT: Your Honor, I need that time to be  
13 prepared for my trial with my strong team.

14 THE COURT: Okay. And you waive any issues with  
15 respect to speedy trial to and including that date?

16 THE DEFENDANT: Yes, your Honor.

17 THE COURT: I'm going to find, under 18 United States  
18 Code, Section 3161, that the request for adjournment,  
19 particularly by the defense, is appropriate and warrants  
20 exclusion of the adjourned time from speedy trial calculations.  
21 I further find that the exclusion is designed to prevent any  
22 possible miscarriage of justice, to facilitate these  
23 proceedings, including pretrial preparation, and to guarantee  
24 effective representation of and preparation by counsel for the  
25 government and the defense, and thus, the need for exclusion.

1 The ends of justice outweigh the interest of the public and the  
2 defendant in a speedy trial pursuant to 18 U.S.C., Section  
3 3161(h)(7)(A) and (b).

4 I look forward to your submission with respect to  
5 interim dates for pretrial conference and submissions.

6 MR. BRAFMAN: Yes, your Honor.

7 THE COURT: Anything else anybody wants to raise  
8 today?

9 MR. BRAFMAN: I don't think so, your Honor.

10 THE COURT: Here's one other thing. Mr. Rimm, we  
11 thank you for helping us. It would be helpful, I don't know if  
12 it'll arise again during the course of these proceedings, but  
13 if you could be sort of on standby in case any independent  
14 counsel issues come up, you would be familiar with them, and it  
15 would be okay to call on you, as it will be, with respect to  
16 the letter that you're going to submit after we get the  
17 submissions from the six other banks? If you would remain as  
18 our standby independent counsel in this case?

19 MR. RIMM: I'd be happy to do so, your Honor.

20 THE COURT: Thanks so much. Thank you everyone.

21 Mr. Rimm, it would be helpful if you were here for the  
22 Curcio hearing on the 14th.

23 MR. RIMM: Yes, your Honor.

24 (Adjourned)  
25